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Scott R. Swix

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EXAMINER

VAN BRAMER, JOHN W

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

03/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Election/Restrictions

1. Newly amended independent claims 1 and 17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The originally submitted claims were directed towards receiving programming content delivered as a scheduled lineup having advertisements inserted into future time slots. The advertisements are categorized as overridable or nonoverrideable by the network provider server. Then the network provider server receives a request from an advertiser to replace the advertisement with a different advertisement. The network provider server determines if the advertisement is overrideable, if the two advertisements are nearly equal in time length, if the two advertisements are in a compatible format, when the last time the replacement advertisement or a similar advertisement has been shown, and based upon the outcome of the determining step inserting or declining insertion of the replacement advertisement. Then the programming content including the replacement advertisement is broadcast, assuming replacement was indicated by the determining steps. The original invention acted based upon information received, there were no indications regarding the ability of the invention to actively solicit information from the advertisers such as creating a web page to sent to advertisers that notify the advertiser of a future advertisement time slot. The newly proposed invention discloses a webpage that is stored at the network provider server. The webpage is to be distributed to advertisers and notify them of a future advertisement time slot. Then based upon the distributed webpage advertisements are received from advertiser.. This

Art Unit: 3622

newly claimed webpage notifies the advertiser of a future advertisement time slot. The advertiser then sends advertisements to the network server. The advertisements are categorized as overridable or non-overridable by the network provider's server. The advertisement is then stored in memory and the database is used to select and schedule an advertisement for insertion into a future time slot. The network server then apparently receives the web page that was provided to the advertiser, the webpage now includes a request to replace the scheduled advertisement for the future advertisement timeslot and a financial premium for performing said replacement. The network server determines if the advertisement is overrideable, if the two advertisements are nearly equal in time length, if the two advertisements are in a compatible format, when the last time the replacement advertisement or a similar advertisement has been shown, and based upon the outcome of the determining step inserting or declining insertion of the replacement advertisement. Then the programming content including the replacement advertisement is broadcast, assuming replacement was indicated by the determining steps. The originally filed claims represent a subcombination of the newly proposed combination claims. The original invention has the network provider server categorizing advertisements as overrideable or nonoverrideable, and then performing steps to determine whether insertion should take place, based upon a request from the advertiser. The newly proposed claims actively solicit the receipt of information from advertiser using a web page that is sent to advertisers. The network server is utilized to create and store a webpage that is sent to elicit request from advertisements via a specific means of actively soliciting the advertisements. This webpage is returned with

Art Unit: 3622

a request to replace an advertisement as well as a specification of a financial premium for replacing the advertisement. The original invention used a scheduled lineup having advertisements inserted into the future time slot. The newly proposed invention includes not only a schedule lineup having advertisement inserted into the future time slot, but also incorporates storing an advertising schedule for scheduled programming, wherein the schedule contains advertisement characteristics for each advertisement time slot in the scheduled programming, receiving advertisements from advertisers and selecting advertisements for insertion. Now we have two different types of content that is ready to be delivered. The original programming content, that is found in the original invention as well as the newly claimed invention, and was received intact and already contains advertisements. The newly proposed invention also has a second type of content that is ready for delivery; the actively solicited advertisements that it selects and inserts into a content stream. Then decisions are made as to whether to replace either the originally inserted advertisements or the newly inserted advertisement with a different advertisement. As the original invention only contemplated replacing advertisements, that have already been inserted into future time slots, and did not contemplate a specific means of actively soliciting the advertisements from an advertiser in the specified manner or the ability to actually insert said advertisements into said future timeslots, the inventions are a combination subcombination of each other. The examiner suggests that the applicants revisit both the originally filed claims as well as the claims that were prosecuted in Office Action dated August 7, 2008, when considering future amendments.

Art Unit: 3622

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-6, 8, and 17-20, withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3622

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Van Bramer
/John Van Bramer/
Primary Examiner, Art Unit 3622